

# Parting the waters of student requests for religious accommodations

By the New York State  
Association of School Attorneys

Few legal issues facing school districts today can escalate into a public relations nightmare as quickly as requests for religious accommodations. How should a district respond when a Muslim student wishes to be excused from class to pray? What happens when a ban aimed at gang-related apparel also affects religious garb? Is it lawful to play Christmas music at a winter concert?

This article will provide an overview of the state of the law, which includes some issues that are well-settled and others that have changed or are developing. For instance, students who do not wish to dissect animals for religious or moral reasons have long had the right pursuant to Education Law Section 809(4) to have the opportunity to complete an alternative project. Effective July 1, 2011, the law also requires districts to develop a policy to give reasonable notice of these rights to all students (and their parents or guardians) enrolled in a course that includes animal dissections. The notice must be distributed to students (and their parents or guardians) enrolled in a course that includes dissection at the beginning of the school year.

The First Amendment to the U.S. Constitution grants parents the right to raise and educate their children in accordance with their religious beliefs. The First Amendment also prohibits school districts, as an arm of the state, from restraining this right or from establishing a religion, coercing anyone to support or participate in a particular religion or from favoring one religion over another. While districts must respect students' and parents' First Amendment rights, they also have a duty to regulate student behavior, including the exercise of religious beliefs, to protect the rights of others and to prevent disruption of school activities. These basic rules require districts to achieve a delicate balance when enforcing policy, creating curriculums and holding special events.

Generally, school districts should try to accommodate requests for religious accommodation, including requests to opt out of district policies or curriculums that may conflict with bona fide practices and beliefs. Districts may decline an accommodation request if, for example, granting the request would substantially disrupt or materially interfere with school activities or where the district's interest in the challenged rule or the importance of the activity outweighs the burden on the free exercise of religion.

Below is a summary of some common religious accommodation issues and relevant court decisions and statutes.

• **Student prayer.** Districts with a Muslim population may receive requests from parents to have their children excused from class to participate in, for example, brief daily prayer or prayer during the month of Ramadan. The U.S. Department of Education has indicated that schools may excuse students from class for religious exercise so long as doing so would not impose material burdens on other students and that, accordingly, a district may lawfully excuse Muslim students briefly from class to enable them to pray during Ramadan. There is no clear body of law addressing the obligations of school districts with regard to accommodating brief student prayer during class time. If the question arises in your district, consult with your school attorney.

• **Dress and appearance.** Districts with safety-driven prohibitions on certain articles of clothing or accessories should ensure that their policies are specific enough to only prohibit those items that pose an actual threat to safety. For example, one court concluded that a district

could not prohibit Catholic students from wearing rosary beads pursuant to a dress code ban on "gang-related" apparel because there was no evidence of hostility from other students or reason to anticipate a disruption or material interference with school activities caused by the students' display of the rosary beads.

When faced with a request for a religious exemption, districts should consider whether an accommodation exists that can satisfy both the district's safety concerns and the student's religious beliefs. In one case, Jewish basketball players challenged a high school athletic association's rule forbidding basketball players from wearing any head coverings, including yarmulkes, to prevent players from slipping on fallen headwear during a game. The court encouraged the parties to explore a form of secure head covering that complies with Jewish law and would meet the association's safety concerns.

Even voluntary school activities can result in a violation of the First Amendment. For example, a Christian parent objected when an Illinois school district held "Opposite Sex Day" which encouraged – but did not require – students to dress as the opposite sex as part of its annual Spirit Week. She kept her children home and filed a lawsuit alleging that her First Amendment rights were violated because her children would have borne the stigma of being singled out if they attended school and did not participate. In denying the district's motion to dismiss, the court said that depending on the circumstances, peer pressure could create a burden on a parent's free exercise rights that outweighs the district's interest in the challenged activity.

• **Holiday displays and performances.** School districts are often the subject of First Amendment complaints concerning their acknowledgment of the winter holiday season. Generally, holiday displays should be temporary, include symbols from several religions, include secular symbols alongside any religious symbols and have a secular purpose (for example, to teach tolerance of various beliefs). Similarly, holiday performances may include religious music, but should be diverse and any religious content should be presented objectively as part of a secular educational program.

• **Religious observance or instruction.** Education Law Section 3210 authorizes districts to excuse a student from school for religious observance or to attend religious instruction upon receipt of a written request signed by the student's parent or guardian.

• **Sexual education and instruction on AIDS.** Students may be excused from studying health and hygiene if it conflicts with their parent or guardian's religion in accordance with Education Law Section 3204(5). Students may also be excused from studying Acquired Immune Deficiency Syndrome (AIDS), a required compo-

nent of health education programs, if their parent or guardian files a written request with the school principal along with an assurance that the student will receive the instruction at home.

• **State required immunizations.** A parent or guardian who objects to state-required immunizations due to "sincere and genuine religious beliefs" can request an exemption from the requirement by providing the school with a signed written statement describing the objection. If questions remain about the parent's sincerity, the school may request supporting documents. Although this exemption is not limited to members of a recognized religious organization whose teachings oppose inoculation, it does not extend to persons whose views are founded upon medical or purely moral considerations, scientific or secular theories, or philosophical and personal beliefs.

Achieving a fair balance of strongly held religious and cultural beliefs with the district's needs and policies when deciding accommodation requests should help foster positive community relations and avoid costly litigation.

Don't underestimate the value of personal interaction when your district receives a request for a religious accommodation. It is often helpful for school personnel to discuss the basis of the request with the student's parents. If the accommodation cannot be granted as requested, consider presenting the parents with alternatives that may satisfy their religious concerns.

As the law in this area continues to evolve, it is important to consult with your school attorney regarding these requests.

*Members of the New York State Association of School Attorneys represent school boards and school districts. This article was written by Lauren Schnitzer of Lamb & Barnosky, LLP.*

## District apologizes to community after speaker leads group in prayer

What should school officials do when a guest speaker delivers an overtly religious message? That was tested as recently as Nov. 3 in the Canastota Central School District in Madison County.

Students reported being surprised when the music ended at a free evening concert at Canastota High School and Joel Penton, a motivational speaker from Ohio, started to talk about turning to Jesus. "He told us we should put our heads down as if we're praying, and he spoke out a prayer for people," junior Audrey Soper told reporter Maureen Nolan of *The Post-Standard* newspaper.

Earlier in the day, Penton had given an in-school presentation that did not contain any religious references.

In response, school officials posted the following statement on the school's website:

"We were unaware that Joel Penton's concert/presentation tonight contained religious content. His message in school was about making a commitment with no religious connotations. After today's presentation he invited students to a free concert this evening that included a free book. The book was not shared with us to preview. We did not allow him to distribute the books on school grounds. Had we known there would be religious content, we would have asked Joel to share that information with students today before inviting them to tonight's event. We apologize if anyone was uncomfortable or offended."

Soper's parents told *The Post-Standard* they believe the principal was blindsided about the nature of the concert and they don't want the same thing to happen to another school. "I'm a Christian but this was totally a set-up for the school," Susette Soper said.

– Staff report